

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

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JOHN HEYKOOP D/B/A EAGLE TOWING,

Plaintiff,

Case No.: 1:18-cv-00632

v

Hon. Robert J. Jonker

FIRST LIEUTENANT JEFFREY WHITE; FIRST  
LIEUTENANT CHRIS MCINTIRE.

Mag. Phillip J. Green

Defendants.

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**JOINT MOTION TO MODIFY CASE MANAGEMENT ORDER**

The parties jointly move this Court to modify the Case Management Order entered in this matter on February 1, 2021 (ECF 83) for the following reasons:

1. Following the mandate of the 6<sup>th</sup> Circuit Court of Appeals, Magistrate Judge Phillip J. Green held a status conference via Zoom in which the parties advised the Court of the status of discovery and preparedness for trial.
2. During the hearing, the parties advised the Court that certain documents related to Plaintiff's damages needed to be supplemented, and the Court set a date of March 1, 2021 for the supplementation production.

3. Unbeknownst to either counsel, on the same day on which the status hearing was being held, officers of the Muskegon County Sheriff's Office, assisted by the Michigan State Police, were executing a search warrant on the premises of Plaintiffs' business. Documents responsive to Plaintiff's damages were seized during the execution of the warrant.
4. Plaintiff has been represented by separate counsel in connection with the search warrant and accompanying investigation, and has advised counsel for Plaintiff in this matter that there is not factual basis to support a criminal complaint to be filed against Plaintiff, and has communicated the same to Muskegon County District Attorney.
5. Counsel for Plaintiff in this matter has disclosed the above-referenced communication with Assistant Attorney General Mark Donnelly, as well as all information in his possession regarding the status of the search warrant and which items seized under the warrant have been returned.
6. Although Plaintiff expected his financial records to be returned by this point, that has yet to occur. While Plaintiff's computers and hard drives have been returned, much of the relevant documents are not in electronic format.
7. Plaintiff continues to seek return of the documents, but it is not known exactly when that will occur. In the meantime, Plaintiff has sought through Freedom of Information Act requests to obtain some of the data that may be existing in different form that is relevant to Plaintiff's damages claim.
8. The parties do not request this modification as a dilatory effort but seek only to permit an opportunity for all of the available and necessary evidence to be produced.

WHEREFORE, the parties respectfully request that this Court modify the Case Management Order by at least 60 days to permit Plaintiff to obtain and produce the relevant documents that are currently being held by the Muskegon County Sheriff's Office.

Respectfully requested:

/s/ John S. Brennan  
John S. Brennan (P55431)  
FAHEY SCHULTZ BURZYCH RHODES PLC  
Attorneys for Plaintiff

Dated: March 22, 2021

/s/ Mark E. Donnelly  
Mark E. Donnelly (P39281)  
Assistant Attorney General  
Attorney for Defendants

Dated: March 22, 2021